No. 88-1309

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1989

THE STATE OF MINNESOTA; RUDY PERPICH, as Governor of the State of Minnesota; HUBERT H. HUMPHREY, III, as Attorney General of the State of Minnesota,

*Cross-Petitioners,*

v.

JANE HODGSON, M.D.; ARTHUR HOROWITZ, M.D.; NADINE T., JANET T., ELLEN Z., HEATHER P., MARY J., SHARON L., KATHY M., and JUDY M., individually and on behalf of all other persons similarly situated; DIANE P., SARAH L., and JACKIE H.; MEADOWBROOK WOMEN'S CLINIC, P.A.; PLANNED PARENTHOOD OF MINNESOTA, a nonprofit Minnesota corporation; MIDWEST HEALTH CENTER FOR WOMEN, P.A., a nonprofit Minnesota corporation; WOMEN'S HEALTH CENTER OF DULUTH, P.A., a nonprofit Minnesota corporation,

*Cross-Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## REPLY BRIEF OF CROSS-PETITIONERS

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## ARGUMENT

### I. THERE EXISTS NO CONSTITUTIONAL RIGHT OF MINORS TO CONCEAL IMPORTANT INFORMATION FROM THEIR PARENTS.

Plaintiffs appear to assert that parental notification offends some purported constitutional right of children to keep information from their parents. Although this Court has previously recognized that mature and best interest minors are entitled to an abortion without parental veto, there is no precedent or constitutional support for the notion that minors have any right to informational privacy from their parents either generally or with specific reference to abortion. Indeed, in any context other than that of the derived "right" to abortion, the proposition would be rejected out of hand.

Lacking any support in either the Constitution itself or the holdings of this Court for such an expansive right, plaintiffs recite a number of statutory provisions which supposedly demonstrate a recognition of a pervasive right of "confidentiality" for minors. *See, e.g.*, Brief of Cross-Respondents at 32-34. Thus, they claim, upholding the Minnesota parental notification law will improperly "open the door to a host of disingenuous legislative enactments mandating parental involvement in minors' decision-making." *Id.* at 35.

In truth, however, parental involvement in minors' decision-making is presently the rule in the vast majority of circumstances. The series of statutes cited by plaintiffs in notes 65-68 at 34 of their brief, clearly do not provide "guaranteed confidentiality in a wide variety of communications." These provisions, which are contained in Minn. Stat. § 595.02, deal narrowly with testimonial privileges as applied to certain



witnesses in judicial proceedings. They do not in any sense guarantee "confidentiality" in any particular context outside the formal testimony of witnesses. Certainly they do not establish any independent right of minors to conceal information from their parents.

Privileges such as the doctor-patient privilege are purely statutory. They are subject to narrow constructions[1] and a number of exceptions.[2]

Even in the medical area, it is clear that in the majority of situations there is no guarantee of confidentiality for a minor *vis a vis* parents. For example, Minn. Stat. § 144.335 which deals with patient access to health records, defines "patient" as follows:

> "Patient" means a natural person who has received health care services from a provider for treatment of a medical, psychiatric, or mental condition, or a person the patient designates in writing as a representative. Except for minors who have received health care services pursuant to sections 144.341 to 144.347, in the case of a minor, "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

The fact that the State has enacted specific legislation in Minn. Stat. §§ 144.341-144.347 which authorizes treatment of minors without parental consent in a very narrow set of de-

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[1] *See, e.g., State v. Staat*, 192 N.W.2d 192 (1971).

[2] *See, e.g.*, Minn. Stat. §§ 144.4175 (carriers of certain communicable diseases); 595.02, subd. 1(J) (sexual assault counselors to disclose certain information); 595.02, subd. 2 (testimony relating to abuse or neglect of minors); 626.52 (report of suspicious wounds); 626.556-626.557 (reporting abuse of minors and vulnerable adults).

fined circumstances, stands as further acknowledgment that in the vast majority of situations not only parental knowledge, but also consent is required for the treatment of minors.

With the exception of the emancipation-related provisions of sections 144.341 and 144.342, these narrow exceptions do not represent any acknowledgment of "maturity" on the part of minors. Rather, they represent a permissible, but not mandated, legislative judgment that certain types of treatment, such as prenatal care and treatment for venereal disease, alcoholism and drug abuse, ought to be actively promoted even at a potential cost to the normal parental role, because of the clear medical need that such treatment be given and the undesirable societal and public health consequences which would follow the lack of such treatment. Even in these limited situations, however, the wisdom and usefulness of the exclusion of parents could well be debated.

That the legislature has tipped the policy balance in favor of promoting treatment for venereal disease, alcoholism, drug abuse, and prenatal care, to the detriment of parental involvement, does not compel a similar policy choice with respect to abortions. Unlike the clear medical necessity for treatment of venereal disease, for example, an abortion normally represents an important life choice unrelated to questions of medical need. The legislature is not required to promote abortion as a socially desirable end in itself. *See, e.g., Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3042 (1989).

Furthermore, this Court has expressly recognized that "[a]bortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 325 (1980). In contrast, for example, the decision to seek



prenatal care or other treatment of pregnancy related conditions does not, in itself, constitute an irrevocable commitment to bear a child. This inherent difference is a matter of such consequence that it is constitutionally permissible to set apart abortion by imposing regulations which are not imposed upon other medical procedures which may be superficially similar. *Id.*; *Planned Parenthood Ass'n v. Danforth*, 428 U.S. 52, 66-67, 80-81 (1976) (written consent and record keeping and reporting requirements imposed upon abortions but not other surgery). Accordingly, the statutory distinctions between minors who seek an abortion and minors who seek to give birth, are rationally related to a legitimate state interest and thus do not offend constitutional equal protection guarantees. *See Planned Parenthood League v. Bellotti*, 641 F.2d 1006, 1012-13 (1st Cir. 1981).

In addition to the medical area, there are numerous situations in which parents are properly involved by explicit statutory directives in making important decisions concerning their minor children. *See, e.g.*, Minn. Stat. §§ 126.264 (rights of parents of students in limited English proficient programs); 127.30-.31 (rights of parents to notice and hearing prior to suspension or expulsion of student); 171.04 (parental approval required for driver's license applications); 259.10 (both parents notified of application for minor's name change); 260.171, subd. 1 (parents notified whenever child taken into custody); 260.155, subd. 1a (parents have right to participate in all juvenile court proceedings); 260.51, art. IV (a parent may petition return of run-away juvenile); 517.02 (parental consent or court order required for minor's marriage); *see also Thompson v. Oklahoma*, 108 S. Ct. 2687, 2702-06 (1988) (appendices C, D and F). Furthermore, as noted by Justice Bren-

nan in *Stanford v. Kentucky*, 109 S.Ct. 2969 (1989), "[t]hirty-seven States have specific enactments requiring that a patient have attained 18 before she may validly consent to medical treatment." *Id.* at 2988 (dissenting opinion).

Thus it is not the State which would "open the door" to radical change in the law concerning parental involvement in minors' decision-making. Rather it is plaintiffs, who by their argument, ask this Court to establish rights in children *vis a vis* their parents far beyond any which have been hitherto recognized.

There is nothing in the prior holdings of this Court or in the record of this case which either requires or supports such a radical departure from the cardinal principle that parents should be accorded at least the opportunity to know about and be involved in all critical life decisions made by their children.

Indeed the decisions of this Court have consistently recognized the proper role of parents in overseeing important decisions in the lives of their children, even when children may object to such involvement. *See, e.g., Parham v. J. R.*, 442 U.S. 584, 602-03 (1979). The "right" of children as against their parents which has been recognized by this Court in the abortion area plainly is not a sweeping right of informational privacy, but a right to avoid obstruction of the abortion by parental veto. *See Danforth*, 428 U.S. at 72-75; *Bellotti v. Baird*, 443 U.S. 622, 643 (1979) (*Bellotti II*); *H. L. v. Matheson*, 450 U.S. 398, 409 (1981). All of these cases, in fact, continue to recognize the general need for parental involvement and communication. None has recognized any general right of minors to keep an abortion secret from their parents.



## II. THERE IS NO SCIENTIFIC CONSENSUS THAT THIS COURT'S RECOGNITION OF THE VULNERABILITY OF PREGNANT CHILDREN RESTS UPON "ARCHAIC JUDGMENTS" CONCERNING THE NATURE OF ADOLESCENTS.

Explaining this Court's conclusion that a state "furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child," the *Bellotti II* plurality reasoned that "[t]hat is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support." 443 U.S. at 641, quoting *Danforth*, 428 U.S. at 91 (Stewart, J., concurring). The *Bellotti II* plurality further noted that this conclusion was in accord with other rulings of the Court grounded upon "the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Id.* at 635 (footnote omitted). *Accord, Matheson*, 450 U.S. at 409-10. Citing the *amicus curiae* brief of the American Psychological Association (APA) in No. 88-1125, plaintiffs appear to suggest that this Court's recognition of the relative vulnerability of children is a "now archaic judgment." Brief of Cross-Respondents at 28 n.55.

Although the APA brief asserts that psychological theory and research "strongly support" the conclusion that most adolescents are competent to make informed decisions about important life choices, including decisions about abortion (APA *amicus* brief at 18-26), its arguments are unpersuasive, and there does not exist any substantial body of empirical

evidence to support the APA's claim. As the APA Interdivisional Committee on Adolescent Abortion has itself most recently reported, "[t]here are few studies directly focused on abortion decision making by adolescents." *Adolescent Abortion, Psychological and Legal Issues*, 42 Amer. Psych. 73 (1987).[3] The Panel on Adolescent Pregnancy and Child Bearing of the National Academy of Sciences has likewise recently concluded that "[t]here is no evidence concerning either the cognitive capacity of adolescents to make decisions about pregnancy termination or the psychological consequences of abortion that would support *or refute* the imposition of age restrictions governing access to abortion services." National Research Council, *Risking the Future* 9 (1987) (emphasis added).[4]

Furthermore, the discipline of adolescent psychiatry appears to be squarely at odds with the contention of the APA that most adolescents are as competent as adults to make informed choices about important life decisions. In *Thompson v. Oklahoma, supra*, the American Society for Adolescent Psychiatry (ASAP) and the American Orthopsychiatric Association filed an *amicus* brief in support of the claim that the

[3] "[R]esearch is still sparse on abortion decision making per se." Melton and Russo, *Adolescent Abortion, Psychological Perspectives on Public Policy*, 42 Amer. Psych. 71 (1987), and "[d]efinitive statements about minors' competence must await large, representative samples of pregnancy decision making by minors and adults." Lewis, *Minors' Competence to Consent to Abortion*, 42 Amer. Psych. 87 (1987).

[4] The APA's similar *amicus* briefs in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986) and *Hartigan v. Zbaraz*, 108 S. Ct. 479 (1987) have been criticized as overstating the available scientific knowledge. *See* Gardner, Scherer & Tester, *Asserting Scientific Authority: Cognitive Development and Adolescent Legal Rights*, American Psychologist 895-902 (June, 1989).



imposition of the death penalty upon minors constituted cruel and unusual punishment.[5] In discussing that issue, these two learned associations surveyed the current scientific research, experience and literature demonstrating that adolescence is a transitional period between childhood and adulthood in which young people are still developing cognitive ability, judgment and fully formed identity or character of adults. In their *Thompson amicus* brief ASAP quoted with approval the pronouncement in *Bellotti II* that "during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment" expected of adults, 443 U.S. at 635, and declared without reservation that "[t]his view is confirmed by a vast body of clinical research and literature." ASAP *amicus* brief at 3-4.[6] The ASAP reviewed the available

[5] ASAP has approximately 1,400 members, one-half of which are child psychiatrists, while the remaining number are general psychriatrists and psychoanalysts who maintain an active interest in adolescents. The American Orthopsychiatric Association is an organization comprised of more than 10,000 members representing a variety of mental health-related professions—psychiatry, psychology, psychiatric nursing, social work, education and the law—including experts in adolescent development. *See* Brief of the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as *amici curiae* in *Thompson v. Oklahoma* at 1.

[6] As examples of such clinical research and literature, the ASAP cited the following: Brunstetter & Silver, *Normal Adolescent Development*, in 2 *Comprehensive Textbook of Psychiatry* 1608 (H. Kaplan & B. Sadock 4th ed. 1985); Hamburg & Wortman, *Adolescent Development and Psychopathology*, in 2 *Psychiatry* ch. 4 (J. Cavenar ed. 1985); *Handbook of Clinical Child Psychology* (C. Walker & M. Roberts eds. 1983); M. Lewis, *Clinical Aspects of Child Development* (2d ed. 1982); S. Ambron, *Child Development* (3d ed. 1981); P. Mussen, J. Conger & J. Kagan, *Child Development and Personality* (5th ed. 1979); M. Rutter, *Changing Youth in a Changing Society* (1979); Graham & Rutter, *Adolescent Disorders*, in *Child Psychiatry: Modern Approaches* 407 (M. Rutter & L. Hersov eds. 1977).

research and literature demonstrating that adolescents "lack cognitive ability, judgment and fully-formed identity or character of adults," and "the judgment necessary to choose carefully among various possibilities and to appreciate the future consequences of their actions"; that they "are less capable of independent, self-directed action than adults"; that they "lack the capacity for mature, principled moral judgment which is characteristic of normal adult thought"; that they "often engage in experimentation and risk-taking"; and that they "tend to be guided by emotions rather than reason." ASAP *amicus* brief at 4-8.

In summary, the ASAP concluded as follows:

> Adolescence is a critical developmental stage through which young persons must pass prior to entering adulthood. The clinical literature confirms what we all generally know and what the law has always recognized—adolescents are not adults. Adolescents are less capable and less responsible than adults, and more in need of protection and support.

*Id.* at 8.[7]

In light of the foregoing, there is certainly no cause for this Court to discard as a "now archaic judgment" its prior recognition that a state furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child and that "a girl of tender years, under emotional stress, may be ill-equipped to make it

[7] ASAP filed a similar *amicus* brief the following term in *Stanford v. Kentucky*, *supra*, which was cited with approval in the dissenting opinion of Justice Brennan, joined by Justices Marshall, Blackmun and Stevens. 109 S. Ct. at 2989.



without mature advice and emotional support." *Bellotti II*, 443 U.S. at 640-41, quoting *Danforth*, 428 U.S. at 91 (Stewart, J., concurring).

## III. A CONSTITUTIONAL MANDATE FOR PARENTAL NOTICE IS NOT A PREREQUISITE TO LEGISLATION PROVIDING FOR SUCH NOTICE.

Plaintiffs fault the State on pp. 27-32 of their brief for failing to establish an overriding constitutional "right to know" on the part of parents. This assertion is either irrelevant or untrue depending upon its intended meaning. Defendants have not asserted that parents have an absolute constitutionally mandated right to know about their daughters' abortion decisions. However, the issue in this case is not whether the Minnesota notice statute is constitutionally mandated, but merely whether it is constitutionally permitted. In that respect, it is clear that this Court has recognized the fundamental rights and role of parents as a constitutionally supported state interest which may be balanced by the legislature against minor's claims of personal autonomy, including those asserted in the area of abortion. *See Parham*; *Bellotti II*, 443 U.S. at 635-39; *Matheson*, 450 U.S. at 410.

Furthermore, it must be remembered that the position of the State in this case is not an effort to pit the rights of parents against the best interests of their children. What is at issue is the process whereby those interests are evaluated and furthered. Plaintiffs point out that the Court in *Parham* established procedures to be followed in cases of parents committing children to institutions. At the heart of those procedures, however, was the desire to protect the child's rights "by reducing risks of error without unduly trenching on traditional parental

authority and without undercutting 'efforts to further the legitimate interests of both the state and the patient that are served by' voluntary commitments." 442 U.S. at 606. The State's position here also seeks such an accommodation. Acceptance of plaintiffs' argument, however, would elevate the "right" to abortion far above the liberty right addressed in *Parham* by totally excluding any parental role at the sole discretion of the child. Plaintiffs cite no authority for the establishment of such a super-right in children.

## IV. A NOTICE REQUIREMENT IS NOT, AS A MATTER OF LAW OR FACT, THE EQUIVALENT OF A CONSENT REQUIREMENT.

Plaintiffs assert that this Court has never considered any "abstract distinction" between notice and consent to be constitutionally significant. That claim is clearly untrue, both as a generality and with specific reference to the issue of minors' abortions.

As a general proposition the Court has, of course, recognized a constitutionally significant distinction between an entitlement of an interested person to control the outcome of a given decision and entitlement to mere notice. *See, e.g., Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978) (constitution entitles unwed father to notice and hearing upon the issue of parental fitness but not to absolute veto of adoption of child by third persons).

Specifically in the case of minors' abortions, plaintiffs' argument ignores both the language and result in *Matheson*. Prior to *Matheson*, the Court had declared unconstitutional Missouri and Massachusetts statutes which required parental consent without providing a court bypass mechanism found



by the Court to protect adequately against an absolute and arbitrary parental vote. If a requirement of mere notice is equivalent to a consent requirement, as suggested by plaintiffs, it must be assumed that the Court in *Matheson* would have declared invalid the Utah notice statute which provided for parental notice but no specific bypass procedure. However, the Court declined to find the Utah statute invalid either on its face or as applied to the minor plaintiff. Chief Justice Burger writing for the Court specifically said:

> The main premise of the dissent seems to be that a requirement of notice to the parents is the functional equivalent of a requirement of parental consent. . . . In *Bellotti II*, however, we expressly declined to equate notice requirements with consent requirements.

*Id.* at 411 n.17 (citations omitted). The Court expressly did not determine "in what circumstances a state must provide alternatives to parental notification." *Id.* at 412 n.22.

Plaintiffs are also wrong in asserting that the record fails to support the conclusion that a notice statute imposes less of a burden upon minors' ability to obtain an abortion than does a consent statute.[8] It is important to note that the Minnesota law does not require either consent or any other affirmative act by parents. Thus it does not permit parents, through inaction, to passively veto their daughter's decision to obtain

[8] Plaintiffs' claim at p. 9 n.12 of their brief that defendants have an obligation to prove clear error by the district court on this point conveniently ignores the fact that there is no "finding" by the trial court that the "burden" imposed by parental notice is the equivalent of that imposed by a consent requirement. Indeed to the extent that it addressed the matter, the trial court's conclusion has been consistent with that asserted by defendants: that a notice statute does impose a lesser burden. *See* Summary Judgment Order. Hodgson Appendix at 151a.

an abortion. It would seem too obvious to require proof that it is more difficult to accomplish any given result if the agreement of other persons is required, than it is if such persons simply have to be notified. If such proof is needed, however, it is evident in the record from plaintiffs' own experience. Certain clinics have, on occasion, in effect converted the Minnesota notice statute into something like a consent statute by insisting that parents not only must be notified but must perform some affirmative act such as giving written consent or acknowledgment of receipt of notice or of paternity. *See, e.g.*, Brief of Cross-Respondents at 19 n.37; P. Exh. 70A, J.A. 429; Wendt T. 48; J.A. 166. In these situations, according to plaintiffs, difficulties have been encountered when parents have refused properly to perform the required acknowledgment. *See, e.g.*, J.A. 287; Wendt T. 66-68. Thus, by their own actions, plaintiff clinics have demonstrated the differing "burdens" resulting from a mere notice requirement as opposed to one requiring some affirmative act of assent.

## V. THE EXCEPTIONS TO THE NOTICE REQUIREMENT PERMIT AVOIDANCE OF NOTICE IN APPROPRIATE CIRCUMSTANCES.

### A. Emancipation.

Minn. Stat. § 144.343, subd. 2, requires notice only to the parents of an unemancipated minor. Plaintiffs assert that the exception for emancipated minors is unworkable because there is no definition of emancipation in the statute. While it is the case that the Minnesota statute does not contain a definition of the specific term "emancipation," the term is given meaning by two preceding sections of Minnesota law. Minn. Stat. §§ 144.341 and 144.342 provide:



144.341. Notwithstanding any other provision of law, any minor who is living separate and apart from parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing personal financial affairs, regardless of the source or extent of the minor's income, may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.

144.342. Any minor who has been married or has borne a child may give effective consent to personal medical, mental, dental and other health services, or to services for the minor's child, and the consent of no other person is required.

It seems clear that the concepts of emancipation can be understood without the need for a declaratory judgment by reference to the circumstances referred to in these sections. Some of the clinics, themselves, have recognized the applicability of these definitions,[9] although at least one has undertaken to unilaterally impose "stricter" standards by requiring minors to have lived away from home for at least six months. Wendt T. 50.

### B. Abuse.

The Minnesota law plainly and unequivocally provides an exception from the notice requirement for any child who says she has been physically or sexually abused or neglected. It seems clear that this exception would address virtually all of the situations in which plaintiffs assert a truly "compelling"

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[9] P. Exh. 71 at pp. 1-2, P. Exh. 73, J.A. 435.

need to avoid notification. Plaintiffs argue that this exception is insufficient because children are reluctant to reveal violence or abuse in their families. Brief of Cross-Petitioners at 23-24. Even if it be assumed that an exception for abused minors is constitutionally required, the State may reasonably require that the minor disclose the abuse. In *Matheson*, for example, the Court held that a notice requirement may be applied to a minor who did not affirmatively assert any concrete reason to avoid parental notice. Thus it is clear that a minor who wishes to avail herself of a claimed exception to a notice requirement may constitutionally be required to at least assert that the factual basis for that exception exists. Certainly there is no basis for a claim that parents of non-abused minors should not be notified simply because some abused minors may be reluctant to report abuse.

Plaintiffs further argue that, since the Minnesota law requires the reporting of the abuse by the clinic to child protection agencies and subsequent investigation by those agencies, the claiming of the exception somehow violates a minor's right to "confidentiality." As noted above, however, while the Court has recognized a "right" of "mature" or "best interest" minors to choose abortion without being subjected to arbitrary parental veto, plaintiffs have cited no authority for the proposition that there further exists a generalized constitutional right of minors to "confidentiality" as against their parents in all matters associated with pregnancy and abortion.

Thus, even if it were true that the clinics' reporting of abuse might ultimately result in parents learning about their daughter's pregnancy and abortion after the fact,[10] that eventuality

[10] Plaintiffs' argument at pp. 24-25 of their brief appears to be that, when alleged abuse is investigated, the parents may learn that their daughter communicated the abuse to a clinic. However, as acknowledged by plaintiffs, the source of the report is, by law, confidential. *See* Minn. Stat. § 626.556, subd. 11. Furthermore, in any situation where a parent is the alleged abuser, the interview notice referred to by plaintiffs would only be required after an interview of the child by child protection authorities at the conclusion of the investigation and then would deal only with that interview. Minn. Stat. § 626.556, subd. 10(c).



would not constitute an impermissible veto over the abortion. Indeed, while plaintiff clinics have presumably notified authorities concerning cases of abuse coming to their attention, they cite no instances of any parental attempts to prevent any abortion resulting from such reports.

Plaintiffs' argument further ignores the fact that the reporting of child abuse by medical care providers is not a function of the statute at issue, nor of the child's wish to affirmatively claim any exemptions granted by the statute. It is, in fact, the legal duty of every medical care provider to identify and report child abuse or neglect which the provider knows or has reason to believe has occurred, regardless of whether the child may express a desire that such abuse be reported. *See* Minn. Stat. § 626.556, subd. 3. Given this absolute reporting requirement and the availability of the abuse/neglect exception, there is no good reason why minors who professed to be victims of abuse were nonetheless sent to court during the time the notice/bypass version of the statute was in effect.[11]

### C. Medical Emergency.

The Minnesota law also provides an exception to the 48-hour notice requirement for situations in which prompt action is needed to save the minor's life. Plaintiffs assert at page 15 that this exception is insufficient in that it fails to permit an

[11] *See, e.g.*, Brief of Cross-Respondents at 11 n.15, n.19; P. Exh. 21, J.A. 382, J.A. 119.

immediate abortion necessitated by serious health problems which are not life threatening. The sole example of such a situation offered by plaintiffs is a situation in which a clinic employee thought that a patient might "spontaneously abort." Plaintiffs cite no testimony, however, that even this instance was a "serious health problem" or that the performance of an immediate artificially induced abortion was the appropriate treatment as opposed to mere hospital observation or other care. *See* T. 166.

**D. Other Compelling Reasons To Avoid Notice.**

The panoply of "compelling" reasons cited by plaintiffs and minor class members, and approved by certain judges, for keeping non-abusive parents ignorant discloses that the scope of the claimed constitutional "right to privacy" for minors' abortions goes well beyond minors who might be abused in some fashion.

Such "compelling" reasons include: her father was paraplegic (Brief of Cross-Respondents at 11 n.17), parents were divorcing, *id.*, mother was a recovering alcoholic, *id.*, mother lived in Maryland, *id.* n.18, father "disagrees" with abortion, *id.* at 13 n.23, father was "conservative," *id.* at 19-20 n.38, didn't want to "disrupt" anything, J.A. 114, might make her quit seeing her boyfriend, *id.*, and parents are "strict" and "religious," *id.* Furthermore, as indicated previously, a common reason to avoid parental notification is a desire not to upset a good parent-child relationship, or spoil a "good girl image." J.A. 114, 381-82, 460; T. 176, 427. No reason whatever is suggested, however, why, as a matter of constitutional law, recovering alcoholics, paraplegics, "conservatives" or "strict" or "religious" persons must be viewed as unfit parents.



Nor must parents who are "opposed" to abortion be *per se* denied an opportunity to know and respond to their daughter's plight. It cannot be automatically assumed that parents who are generally opposed to abortion would be unsupportive or obstructive of their own daughter's desire to have one. *See, e.g.*, testimony of Kathy M., T. 1233-34. Furthermore, while abortion is a medical procedure, the most serious issues surrounding it are not medical or scientific at all. The issue of how to deal with an unwanted pregnancy is one fraught with moral, ethical and spiritual concerns.[12] This Court has not declared, nor is the state required to regulate as if, abortion were an inherent good to be actively promoted.[13] Parents are not, of course, permitted by law to employ physical abuse or confinement to coerce their daughter. *See, e.g.*, Minn. Stat. § 609.255, subd. 3 (1988) (prohibiting unreasonable confinement or restraint of children by parents). However, there is no evidence to support the notion that previously non-abusive parents will suddenly resort to prohibited mistreatment, or that physically coercive parents are so common as to preclude notification to the vast majority of parents who would not engage in unlawful conduct. Accordingly, there is no sound basis for plaintiffs' apparent premise that only medical doctors, their hired abortion "counselors," teen "advocates" and pro-abortion parents are to be permitted an opinion on the abortion decision of a minor.

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[12] *See, e.g., Danforth*, 428 U.S. 52, 102-03 (Stevens, J.); *Bellotti II*, 443 U.S. at 640 (Powell, J.)

[13] *Webster*, 109 S. Ct. at 3042.

## CONCLUSION

For the foregoing reasons and those previously articulated in Cross-Petitioners' initial brief, the Court is urged to reverse the appeals court determination that parental notice may not be required without providing a court bypass option and to uphold the ability of a state to accord parents at least timely notice before taking the irrevocable step of performing an abortion upon their daughter.

Respectfully submitted,

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